

## Rough Transcript

Page 2	Page 3
<p>1</p> <p>2 IN THE UNITED STATES DISTRICT COURT</p> <p>3 FOR THE SOUTHERN DISTRICT OF NEW YORK</p> <p>4</p> <p>5 -----X</p> <p>6 CHEFS DIET ACQUISITION CORP.,</p> <p>7 d/b/a CHEFS DIET,</p> <p>8 Plaintiff, CASE NO. 14-CV-8467(JMF)</p> <p>9 v.</p> <p>10 LEAN CHEFS, LLC, NICHOLAS ZAZZA</p> <p>11 and ARTHUR GUNNING,</p> <p>12</p> <p>13 -----X</p> <p>14 * CONFIDENTIAL *</p> <p>15 * ATTORNEYS' EYES ONLY *</p> <p>16 DEPOSITION OF ARTHUR V. GUNNING</p> <p>17 New York, New York</p> <p>18 Wednesday, January 7, 2015</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p>1</p> <p>2</p> <p>3</p> <p>4</p> <p>5</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10 Reported by:</p> <p>11 ANNETTE ARLEQUIN, CCR, RPR, CRR, CLR</p> <p>12 JOB NO. 88723</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
Page 4	Page 5
<p>1</p> <p>2</p> <p>3</p> <p>4</p> <p>5 January 7, 2015</p> <p>6 11:00 a.m.</p> <p>7</p> <p>8 CONFIDENTIAL/ATTORNEYS' EYES ONLY</p> <p>9 deposition of ARTHUR V. GUNNING, held at</p> <p>10 the offices of Pryor Cashman, Seven Times</p> <p>11 Square, New York, New York, pursuant to</p> <p>12 Notice, before Annette Arlequin, a</p> <p>13 Certified Court Reporter, a Registered</p> <p>14 Professional Reporter, a Certified LiveNote</p> <p>15 Reporter, a Certified Realtime Reporter,</p> <p>16 and a Notary Public of the State of New</p> <p>17 York.</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p>1</p> <p>2 APPEARANCES:</p> <p>3</p> <p>4</p> <p>5 PRYOR CASHMAN LLP</p> <p>6 Attorneys for Plaintiff</p> <p>7 7 Times Square</p> <p>8 New York, New York 10036</p> <p>9 BY: JAMES S. O'BRIEN, JR., ESQ.</p> <p>10 ANDREW M. GOLDSMITH, ESQ.</p> <p>11</p> <p>12 MEREDITH &amp; KEYHANI PLLC</p> <p>13 Attorneys for Defendants'</p> <p>14 330 Madison Avenue - 6th Floor</p> <p>15 New York, New York 10017</p> <p>16 BY: DARIUS KEYHANI, ESQ.</p> <p>17 FRANCES H. STEPHENSON, ESQ.</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>

## Rough Transcript

Page 6

IT IS HEREBY STIPULATED AND AGREED by and between the attorneys for the respective parties herein, that filing and sealing be and the same are hereby waived;

IT IS FURTHER STIPULATED AND AGREED that all objections, except as to the form of the question, shall be reserved to the time of the trial;

IT IS FURTHER STIPULATED AND AGREED that the within deposition may be sworn to and signed before any officer authorized to administer an oath, with the same force and effect as if signed and sworn to before the Court.

- o0o -

Page 7

\* ROUGH - CONFIDENTIAL - ATTORNEYS' EYES ONLY \*

ARTHUR GUNNING, called as a witness, having been duly sworn by a Notary Public, was examined and testified as follows:

\* \* \*

EXAMINATION BY

MR. O'BRIEN:

Q. Good morning, Mr. Gunning. My name is James O'Brien. I represent Chefs Diet Acquisition Corp. 11:10AM

If I refer to that entity as CDAC, will we be able to keep that straight?

A. Yes.

Q. Okay. I'm going to be asking you a series of questions. My questions are not supposed to be trick questions or difficult. If I ask you a question that you don't understand, just let me know and I'll work with you to get a question out that you can understand, okay? 11:11AM

A. Yes.

Q. The court reporter takes down what you say, so just give me an audible answer. A shrug or a nod of the head, she can't take that down, all right? 11:11AM

Page 8

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A. Of course.

Q. If you need to take a break, let me know. We'll accommodate you.

Your attorney is here to help you. 11:11AM

Feel free to consult with him, but I would ask you to wait until you've already given your answer. Don't consult with him during the pendency of a question because it then suggests, you know, that he's suggesting answers and we don't want to have that, okay? 11:11AM

A. Understood.

Q. Okay. All right. So let's start with some background information.

Did you attend college, sir? 11:12AM

A. No, I didn't.

Q. Did you graduate from high school?

A. Yes, I did.

Q. Can you give me a brief recitation of your employment history? 11:12AM

A. Yes. Employment history, when I was in high school, my mother owned a restaurant. The restaurant was failing so I made a decision to work with her and help her build her business rather than go to college, which the business 11:12AM

Page 9

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winded up being successful and she sold it, and she wound up doing well with it, thank God.

Thereafter I built routes. Winded up building routes from scratch to million dollar businesses. 11:13AM

A&F Candy Distributors is one of them.

Had a Reisman pretzel route, a whole line of pretzels. Built those from zero to 400 accounts. Did that in a relatively short period of time. 11:13AM

Mystic Spring Water and Juice, I launched that in New York. I was the largest distributor in Brooklyn. That was very successful. 11:13AM

Went to Wall Street, became a large broker on Wall Street. Did that for about I guess three, four years.

Opened up -- was a partner with Zone Gourmet Diet Delivery. Built that from zero to a \$30 million company. 11:13AM

Built Zone Chefs, which became Chefs Diet. Built that from scratch, zero advertising, up to a 40 to \$50 million company. 11:13AM



## Rough Transcript

Page 10	Page 11
<p>1 * ROUGH - CONFIDENTIAL - ATTORNEYS' EYES ONLY *</p> <p>2 And now Lean Chefs.</p> <p>3 Q. Thank you.</p> <p>4 When you said that you were on Wall</p> <p>5 Street, when did you start working on Wall 11:14AM</p> <p>6 Street?</p> <p>7 A. Twenty-eight years old. About</p> <p>8 twenty-one years ago.</p> <p>9 Q. So is that about '94?</p> <p>10 A. Yeah. '93, '94, um-hmm. 11:14AM</p> <p>11 Q. And when you started on Wall Street,</p> <p>12 what were you doing?</p> <p>13 A. I was a cold caller for about a year</p> <p>14 just learning the business. I really didn't do</p> <p>15 much solicitation, just started learning the 11:14AM</p> <p>16 business. Passed my Series 7 test and a 63, and</p> <p>17 then became a financial consultant.</p> <p>18 Q. Where were you working as a cold</p> <p>19 caller in '94?</p> <p>20 A. It was a company by the name of White 11:15AM</p> <p>21 Rock, White Rock Securities. Matter of fact,</p> <p>22 that's where I met the owner of Chefs Diet,</p> <p>23 Kevin Glodek. He was also working within the</p> <p>24 same office.</p> <p>25 Q. When did you stop working for White 11:15AM</p>	<p>1 * ROUGH - CONFIDENTIAL - ATTORNEYS' EYES ONLY *</p> <p>2 Rock Securities?</p> <p>3 A. Right after I got licensed, I went to</p> <p>4 a company called Toluca Pacific.</p> <p>5 Q. When was that? 11:15AM</p> <p>6 A. That was a year after.</p> <p>7 Q. '95?</p> <p>8 A. Yeah. I was at Toluca for about</p> <p>9 three years.</p> <p>10 Q. Till about '98? 11:15AM</p> <p>11 A. '97, '98, yeah.</p> <p>12 Q. Okay. Where did you go after that?</p> <p>13 A. After that there was a company by the</p> <p>14 name of-- that was the last brokerage firm that</p> <p>15 I was actually a financial consultant in. At 11:16AM</p> <p>16 that point I started looking into diet delivery.</p> <p>17 I found a company that was doing it in Long</p> <p>18 Island, so I wound up leaving the industry a few</p> <p>19 years after that to really do full time diet</p> <p>20 delivery. 11:16AM</p> <p>21 Q. Can you give me any approximate date</p> <p>22 when you left the industry?</p> <p>23 You've told me that you left Toluca</p> <p>24 Pacific around '97?</p> <p>25 A. Yeah, Toluca Pacific was about '97. 11:16AM</p>
Page 12	Page 13
<p>1 * ROUGH - CONFIDENTIAL - ATTORNEYS' EYES ONLY *</p> <p>2 Let's see, 17 years. It was probably 2000,</p> <p>3 maybe 2000 or -- '97 to 2000. '97, '99, right</p> <p>4 around there. I'm not really sure. I don't</p> <p>5 want to give you the wrong answer, but '97, '99 11:16AM</p> <p>6 I was out of the industry.</p> <p>7 Q. And in or about 1999, you say that</p> <p>8 you found a diet delivery company?</p> <p>9 A. There was a gentleman making the</p> <p>10 meals in Long Island, 20 clients, very small. I 11:17AM</p> <p>11 became one of his clients and I loved the</p> <p>12 concept. I lost weight. I felt great.</p> <p>13 I called him and I said, "Do you know</p> <p>14 what you have here?"</p> <p>15 And he said, "Well, if I get to 100 11:17AM</p> <p>16 clients, I'll be happiest guy in the world."</p> <p>17 And I said, "I'll get you thousands</p> <p>18 of clients. I said I believe in this. We're</p> <p>19 helping people."</p> <p>20 So I got involved with it and we 11:17AM</p> <p>21 winded up going up to 3,000 clients with my</p> <p>22 efforts.</p> <p>23 Q. Was the name of that company Zone</p> <p>24 Gourmet?</p> <p>25 A. That was. 11:17AM</p>	<p>1 * ROUGH - CONFIDENTIAL - ATTORNEYS' EYES ONLY *</p> <p>2 Q. And Zone Gourmet was in Long Island?</p> <p>3 A. Yes, it was. And I was doing the</p> <p>4 sales and marketing for that company. I was in</p> <p>5 charge of all the sales and marketing. 11:17AM</p> <p>6 Q. So you started there about '99?</p> <p>7 A. Roughly, yes.</p> <p>8 Q. For how long were you with Zone</p> <p>9 Gourmet?</p> <p>10 A. Zone Gourmet, probably about five 11:18AM</p> <p>11 years I would think.</p> <p>12 Q. Till about 2004?</p> <p>13 A. 2004, 2005, 6, 7, 8, 9. Couldn't</p> <p>14 have been more than 2002, 2003 because I waited</p> <p>15 two years to open up. After I left them, two 11:18AM</p> <p>16 years later we opened up Zone Chefs and Zone</p> <p>17 Chefs I built that in probably about four years,</p> <p>18 four or five years and that was up until about</p> <p>19 2009.</p> <p>20 Q. How did you come to learn of Zone 11:19AM</p> <p>21 Gourmet?</p> <p>22 A. I had a personal trainer that I was</p> <p>23 working out with and like anything else, if</p> <p>24 you're working out and you're not eating</p> <p>25 correctly, you're not going to get the results. 11:19AM</p>

## Rough Transcript

Page 34	Page 35
<p>1 * ROUGH - CONFIDENTIAL - ATTORNEYS' EYES ONLY *</p> <p>2 name."</p> <p>3 Most of the partners weren't</p> <p>4 hands-on. Nick and I put a lot of hours in, a</p> <p>5 lot of work. The first year I worked 365 days 11:43AM</p> <p>6 straight, never took a day off. Some days were</p> <p>7 20-hour days. Always there. That's pretty much</p> <p>8 what we do; we work hard and we build, you know?</p> <p>9 And I guess the other partners it was</p> <p>10 a lot easier for them to want to change the 11:43AM</p> <p>11 name. You know, for us we were attached to the</p> <p>12 name. It's our brand, we built it.</p> <p>13 Q. When the name changed to Chefs Diet,</p> <p>14 was there a new logo created?</p> <p>15 A. With Chefs Diet? Yes. 11:44AM</p> <p>16 Q. And who created that logo?</p> <p>17 A. Nick Zazza.</p> <p>18 Q. Were you involved in that at all?</p> <p>19 A. The name.</p> <p>20 Q. Well, the logo. Were you involved 11:44AM</p> <p>21 with the creation of that?</p> <p>22 A. Everyone gave their feedback. We had</p> <p>23 partners so we always discussed everything.</p> <p>24 Q. And similarly, did you discuss the</p> <p>25 look and feel of the website? 11:44AM</p>	<p>1 * ROUGH - CONFIDENTIAL - ATTORNEYS' EYES ONLY *</p> <p>2 MR. KEYHANI: Objection to form.</p> <p>3 You can answer the question.</p> <p>4 A. No. We just let them build the</p> <p>5 website. That's what Mr. Zazza does. He's very 11:44AM</p> <p>6 talented. He's great with technology. I'm</p> <p>7 great with marketing and advertising. That's</p> <p>8 why we have a great relationship.</p> <p>9 Q. Well, when he -- he built the new</p> <p>10 website for Chefs Diet, correct? 11:44AM</p> <p>11 A. Yes.</p> <p>12 Q. And did he choose the color scheme to</p> <p>13 be employed on that website?</p> <p>14 A. Once again, it might have been</p> <p>15 discussed with everyone. We had different 11:45AM</p> <p>16 colors. We had zone -- we had orange for one</p> <p>17 company. We had, you know, Zone Diet at Home</p> <p>18 was orange. We had different colors.</p> <p>19 Q. But for Chefs Diet, do you recall</p> <p>20 discussions in which you were deciding what 11:45AM</p> <p>21 color to use for the website?</p> <p>22 A. I don't recall.</p> <p>23 Q. You said you had different companies.</p> <p>24 What different companies did you</p> <p>25 have? 11:45AM</p>
Page 36	Page 37
<p>1 * ROUGH - CONFIDENTIAL - ATTORNEYS' EYES ONLY *</p> <p>2 A. Different companies as far as</p> <p>3 different divisions?</p> <p>4 Q. I'm just saying --</p> <p>5 A. We had different divisions within 11:45AM</p> <p>6 Zone Chefs.</p> <p>7 Zone Chefs had a kosher division</p> <p>8 which made kosher meals.</p> <p>9 Zone Chefs had a vegetarian program,</p> <p>10 which I formed a relationship with Zen Palate 11:45AM</p> <p>11 and they were making our vegetarian meals.</p> <p>12 Q. How about Chefs Diet?</p> <p>13 A. Those relationships carried over.</p> <p>14 Q. Once the name changed from Zone Chefs</p> <p>15 to Chefs Diet, were there divisions, as you say, 11:46AM</p> <p>16 in Chefs Diet?</p> <p>17 A. Yes. Same relationships just carried</p> <p>18 over and they changed the name.</p> <p>19 So if it was Zone Chef Kosher, then</p> <p>20 it was Chefs Diet Kosher. And the vegetarian 11:46AM</p> <p>21 was the same way and the kids program I designed</p> <p>22 was also the same way. The national program</p> <p>23 became I guess, I believe it's Chefs Diet</p> <p>24 Nation. I'm not -- I don't -- national. I'm</p> <p>25 not sure what their name is. 11:46AM</p>	<p>1 * ROUGH - CONFIDENTIAL - ATTORNEYS' EYES ONLY *</p> <p>2 Q. Now you say these are divisions.</p> <p>3 Are they actual entities I mean like</p> <p>4 an LLC or a corporation? Do you know?</p> <p>5 A. I'm not sure. 11:47AM</p> <p>6 MR. KEYHANI: Objection to the extent</p> <p>7 it calls for a legal conclusion.</p> <p>8 A. I'm not sure exactly. I don't want</p> <p>9 to give you a wrong answer on that so...</p> <p>10 Q. When you say "the national program," 11:47AM</p> <p>11 what is that or what was that under Chefs Diet?</p> <p>12 A. Well, let's go back to Zone Chefs.</p> <p>13 Zone Chefs I came up with an idea that if I</p> <p>14 could find a company that could make the meals</p> <p>15 for us, package the meals and ship them across 11:47AM</p> <p>16 the whole country, I thought it would be a great</p> <p>17 idea.</p> <p>18 I found that place in Iowa. Set up a</p> <p>19 meeting, went out there, formed a wonderful</p> <p>20 relationship with them and we winded up doing 11:47AM</p> <p>21 national meals; making the meals and delivering</p> <p>22 them across the whole country with a process</p> <p>23 called Modified Atmosphere Packaging, and we</p> <p>24 built that up pretty strong.</p> <p>25 Q. Is that dry ice? 11:48AM</p>



## Rough Transcript

Page 38	Page 39
<p>1 * ROUGH - CONFIDENTIAL - ATTORNEYS' EYES ONLY *</p> <p>2 A. It was used with dry ice, right, and</p> <p>3 it was modified atmospheric where they take out</p> <p>4 the oxygen and they put nitrogen within the</p> <p>5 package to give it a longer shelf life. 11:48AM</p> <p>6 Q. And it's frozen food.</p> <p>7 A. No, fresh food.</p> <p>8 Q. Packed in dry ice.</p> <p>9 A. Well, to keep it nice and cold you</p> <p>10 put the ice packs within the bag, but the 11:48AM</p> <p>11 product itself was lettuce that would last 21</p> <p>12 days because the nitrogen was in there, so it</p> <p>13 just extended the shelf life.</p> <p>14 Q. Okay.</p> <p>15 A. But fresh food, not frozen. 11:48AM</p> <p>16 Q. And that would be mailed across the</p> <p>17 country?</p> <p>18 A. Across the country.</p> <p>19 Q. On a weekly basis?</p> <p>20 A. Weekly. 11:48AM</p> <p>21 Q. What is the name of the outfit in</p> <p>22 Iowa?</p> <p>23 A. It was Pure Foods was the company.</p> <p>24 Q. And who entered into the agreement</p> <p>25 with Pure Foods? 11:49AM</p>	<p>1 * ROUGH - CONFIDENTIAL - ATTORNEYS' EYES ONLY *</p> <p>2 A. That would be our -- some of the</p> <p>3 partners. I guess it was probably Alex.</p> <p>4 I found the company. I went out</p> <p>5 there, I formed the relationship and then I let 11:49AM</p> <p>6 them do all the paperwork and everything else.</p> <p>7 Q. My question really was who were the</p> <p>8 parties to that -- there was a written contract,</p> <p>9 right?</p> <p>10 A. Yes. 11:49AM</p> <p>11 Q. Okay. And who were the parties to</p> <p>12 that contract?</p> <p>13 You had Pure Foods on one side and</p> <p>14 then what was the entity or entities on the</p> <p>15 other side? 11:49AM</p> <p>16 A. Same partners, but now with the</p> <p>17 national, Mr. Zazza was also involved.</p> <p>18 Q. And I don't mean to ask you a legal</p> <p>19 question, but if you can remember, was the</p> <p>20 contract between Pure Foods and these 11:49AM</p> <p>21 individuals or was the contract between Pure</p> <p>22 Foods and a company?</p> <p>23 MR. KEYHANI: I'm going to object to</p> <p>24 the extent it calls for a legal conclusion.</p> <p>25 But you can answer the question. 11:49AM</p>
Page 40	Page 41
<p>1 * ROUGH - CONFIDENTIAL - ATTORNEYS' EYES ONLY *</p> <p>2 A. I'm not sure.</p> <p>3 Q. Okay.</p> <p>4 A. I don't want to give you a wrong</p> <p>5 answer.</p> <p>6 Q. Okay. Was the the national program,</p> <p>7 did it have a name?</p> <p>8 A. Yes. It was Zone Diet at Home.</p> <p>9 And going to the color schemes that</p> <p>10 you mentioned before, that site was orange. 11:50AM</p> <p>11 That was a totally different color so we just --</p> <p>12 we changed up the colors based on I believe that</p> <p>13 the kosher was blue, so there was no real set</p> <p>14 color for anything. It was just a different</p> <p>15 look and feel. 11:50AM</p> <p>16 Q. And Zone Diet at Home, was that a</p> <p>17 corporation or an LLC, do you know?</p> <p>18 MR. KEYHANI: Objection to the extent</p> <p>19 it calls for a legal conclusion.</p> <p>20 You can answer the question. 11:50AM</p> <p>21 A. I'm not sure. I don't want to -- I'm</p> <p>22 not sure. I'm sure it was a corporation, but</p> <p>23 I'm not sure if it was an LLC. I'm not sure.</p> <p>24 Q. Did Zone Diet at Home have a</p> <p>25 checkbook? 11:50AM</p>	<p>1 * ROUGH - CONFIDENTIAL - ATTORNEYS' EYES ONLY *</p> <p>2 A. I would say yes.</p> <p>3 Q. So Zone Diet at Home was able to make</p> <p>4 payments.</p> <p>5 A. Yes. 11:51AM</p> <p>6 Q. Did Zone Diet at Home have a bank</p> <p>7 account?</p> <p>8 A. I would say yes.</p> <p>9 Q. Did Zone Diet at Home have a</p> <p>10 president or CEO? 11:51AM</p> <p>11 A. I'm not sure if we ever named</p> <p>12 anybody as CEO for that company, but I'm sure --</p> <p>13 possibly. I'm not sure. I don't want to give</p> <p>14 you the wrong answer.</p> <p>15 Q. Is it your understanding that Chefs 11:51AM</p> <p>16 Diet owned Zone Diet at Home?</p> <p>17 A. Chefs Diet -- no, different partners.</p> <p>18 There were different partners with that.</p> <p>19 Mr. Zazza wasn't a partner with Chefs</p> <p>20 Diet, but Mr. Zazza was a partner with Zone Diet 11:51AM</p> <p>21 at Home, so no, it was just a different company.</p> <p>22 Q. So we've got Chefs Diet and Zone Diet</p> <p>23 at Home.</p> <p>24 A. Um-hmm.</p> <p>25 Q. What was the name of the kosher 11:52AM</p>

## Rough Transcript

Page 42

1 \* ROUGH - CONFIDENTIAL - ATTORNEYS' EYES ONLY \*

2 company?

3 A. Zone Chefs Kosher and I think it

4 became Chefs Diet Kosher.

5 Q. And who were the owners of the Chefs 11:52AM

6 Diet Kosher?

7 A. The same owners that were with Zone

8 Chefs or Chefs Diet, the same owners.

9 Q. Were there any other companies?

10 A. No, not that I can recall. 11:52AM

11 Q. After the change to Chefs Diet, did

12 Zone Diet at Home change its name?

13 A. Yes, I would believe they did.

14 Q. And what was the new name?

15 A. I don't recall. It could be Chefs 11:53AM

16 Diet National. I'm not sure. I don't want to

17 give you the wrong name because I don't recall

18 what the name is.

19 Q. When you made the change from Zone

20 Chefs to Chefs Diet, can you tell me how you 11:54AM

21 came up with Chefs Diet?

22 A. The name?

23 Q. Um-hmm.

24 A. We'd brainstorm. We'd come up with a

25 bunch of names. Then we'd go to the domain 11:54AM

Page 44

1 \* ROUGH - CONFIDENTIAL - ATTORNEYS' EYES ONLY \*

2 called Chefs Diet Delivery LLC?

3 A. No, no.

4 Q. Let me show you what we previously

5 have marked as an exhibit. 11:56AM

6 MR. O'BRIEN: Off the record.

7 (Discussion off the record.)

8 (Plaintiff's Exhibit 1, Second

9 Amended and Restated Asset Purchase

10 Agreement, Bates stamped CDAC 639 through

11 685, marked for identification, as of this

12 date.)

13 BY MR. O'BRIEN:

14 Q. Mr. Gunning, I've placed before you

15 what we marked as Plaintiff's Exhibit 1 for 11:56AM

16 identification.

17 Do you recognize this document?

18 MR. KEYHANI: Take some time to look

19 at it.

20 (Document review.) 11:57AM

21 A. Okay.

22 Q. Do you recognize that?

23 A. Yes. This is when we sold the

24 company. This was I guess --

25 MR. KEYHANI: I'm going to object to 11:57AM

Page 43

1 \* ROUGH - CONFIDENTIAL - ATTORNEYS' EYES ONLY \*

2 sites to see which ones are available. Then

3 we'd look up and see which ones are already

4 taken, already corporations. So we always have

5 a huge list and then we just eliminate based on, 11:54AM

6 you know, just a process that we go through to

7 come up with any name.

8 Q. Can you recall any of the other names

9 that you were contemplating when you chose Chefs

10 Diet? 11:54AM

11 A. It was probably hundreds of them. I

12 mean pretty much we just come up with a bunch of

13 names.

14 At one point when I was -- the same

15 way with Zone Chefs. You know, I would come up 11:55AM

16 with a bunch names and I guess a lot of them

17 back them were zone. That was a word we were

18 using was zone because it seemed like the whole

19 industry was using that type of name, so with

20 this I guess some of the names, most of the 11:55AM

21 names were, you know, a lot of them had the name

22 chefs involved. Chefs are very popular on TV, a

23 lot of celebrity chefs, so chef seemed like it

24 was a popular word to use for meals.

25 Q. Are you familiar with an entity 11:55AM

Page 45

1 \* ROUGH - CONFIDENTIAL - ATTORNEYS' EYES ONLY \*

2 the question to the extent it calls for a

3 legal conclusion.

4 But you can answer the question.

5 BY MR. O'BRIEN: 11:58AM

6 Q. Have you seen it before?

7 A. Yeah. Probably a while, but I'm not

8 sure if it's the exact thing that I had seen --

9 Q. Okay.

10 A. -- but it could be, possibly. 11:58AM

11 Q. Okay. You do know that there was a

12 sale, right?

13 A. Yes.

14 Q. Okay. And there was a sale

15 memorialized by some written agreement, right? 11:58AM

16 A. Correct.

17 Q. So in the first paragraph you see

18 this is the paragraph where they say who the

19 parties to the contract are, and they mention

20 Chefs Diet Acquisition Corp. 11:58AM

21 That's the CDAC that I mentioned,

22 right?

23 A. Yes.

24 Q. And then it says on the one side, and

25 on the other side we have Chefs Diet Delivery 11:58AM



## Rough Transcript

Page 54

1 \* ROUGH - CONFIDENTIAL - ATTORNEYS' EYES ONLY \*

2 that company still exist?

3 A. I don't know. Once again, that's

4 their business.

5 Q. Did Chefs Diet have a program in 12:08PM

6 place to develop new customers?

7 A. Did they have a program in place to

8 develop new customers after we sold it?

9 Q. No, no. While you were -- well,

10 strike that. 12:08PM

11 After the change in name from Zone

12 Chefs to Chefs Diet, you stayed -- you were

13 still a partner?

14 A. Correct.

15 Q. For Zone Chefs while you were there, 12:09PM

16 I understand that you had that big pop at the

17 beginning because of the article.

18 After that time, did you have a

19 marketing program of any kind?

20 A. Yes. I created the marketing. 12:09PM

21 Q. You created the marketing.

22 A. Yes.

23 Q. That's your thing.

24 A. Yes, that's my forte.

25 Q. Tell me some of the things you did at 12:09PM

Page 55

1 \* ROUGH - CONFIDENTIAL - ATTORNEYS' EYES ONLY \*

2 Zone Chefs to create the marketing.

3 MR. KEYHANI: Objection to form.

4 What are you talking about, Chefs

5 Diet or -- 12:09PM

6 MR. O'BRIEN: Zone Chefs. I'm sorry.

7 MR. KEYHANI: You were going back --

8 MR. O'BRIEN: Yeah.

9 MR. KEYHANI: Go ahead.

10 BY MR. O'BRIEN: 12:09PM

11 Q. I'm talking about while you were at

12 Zone Chefs.

13 A. Everything.

14 Q. You sent out mailings?

15 A. We sent out mailings. We did TV. We 12:09PM

16 did radio. We did blogs. We did billboards,

17 gorilla marketing, taking the sales crew and

18 going out and handing out pamphlets on the

19 street, going to events; going to Fortunoff's

20 and doing cooking shows; editorials. Unlimited 12:10PM

21 to what we did. I'm always finding new sources

22 of trying to bring in, you know, new clients.

23 Q. Referring now to the mailing, that's

24 one element of your marketing efforts, right?

25 A. A small piece. 12:10PM

Page 56

1 \* ROUGH - CONFIDENTIAL - ATTORNEYS' EYES ONLY \*

2 Q. Mailings.

3 A. A small piece of it, right.

4 Q. And how do you get names of people to

5 mail fliers to? 12:10PM

6 A. From different companies, but I found

7 one company that I'm still using to this day

8 that really provides, you know, the right type

9 of demographic.

10 Q. What company is that? 12:10PM

11 A. Is this confidential where the other

12 company won't get this name? Because this is

13 part of my --

14 MR. KEYHANI: We're going to

15 designate the entire deposition 12:11PM

16 confidential and then we'll in 30 days

17 clarify that.

18 THE WITNESS: Because I don't want to

19 give them my marketing strategies of

20 course. 12:11PM

21 MR. KEYHANI: Are you okay with that?

22 MR. O'BRIEN: I'm not going to give

23 anyone your marketing strategies.

24 MR. KEYHANI: No, no, but

25 disclosing -- you're not going to disclose 12:11PM

Page 57

1 \* ROUGH - CONFIDENTIAL - ATTORNEYS' EYES ONLY \*

2 the transcript of this deposition until

3 we've had a chance to review it and

4 designate certain areas.

5 MR. GOLDSTMITH: I think that's part 12:11PM

6 of the protective order, yes.

7 MR. KEYHANI: Is that part of the

8 protective order?

9 MR. GOLDSTMITH: I'm pretty sure it

10 is. 12:11PM

11 MR. KEYHANI: Well, just in case,

12 because it's not in front of me, I want to

13 make sure that this deposition is

14 designated as highly confidential,

15 attorneys' eyes only, and then we will 12:11PM

16 review it and then indicate specifically

17 what parts we want designated as highly

18 confidential.

19 MR. O'BRIEN: That's fine.

20 MR. KEYHANI: Go ahead. 12:11PM

21 A. \*\*Epsilon is the name of the company.

22 Q. Okay. And where is Epsilon located?

23 A. I'm not sure. I'm not sure, but

24 Epsilon, you can look them up on line. They're

25 one of the biggest data companies out there. 12:11PM

## Rough Transcript

Page 58

1 \* ROUGH - CONFIDENTIAL - ATTORNEYS' EYES ONLY \*

2 I've been using them forever.

3 Q. They're one of the biggest data

4 companies out there.

5 A. For what we do. 12:12PM

6 Q. Okay. So their name is not a secret,

7 right?

8 A. No, no.

9 Q. And how do you purchase names from

10 them? 12:12PM

11 A. I go by a certain demographic. What

12 I look for is a certain income; people who are

13 interested in health products; have purchased

14 any type of health product in the past; certain

15 age. You know, our demographic. 12:12PM

16 And they would let me know how many

17 names they have within a geographic area that

18 fit pretty much the demographic that I'm looking

19 for. They would let me know how many names and

20 we would purchase. 12:12PM

21 We purchased millions and millions of

22 names with the last company and to date right

23 now we've purchased hundreds of thousands of

24 names. That's what we do. We collect data.

25 Q. So with Zone Chefs you purchased 12:12PM

Page 60

1 \* ROUGH - CONFIDENTIAL - ATTORNEYS' EYES ONLY \*

2 Q. So you've been using Epsilon for

3 years.

4 A. Forever. That's my company, yeah.

5 Q. And how much does Epsilon charge you 12:13PM

6 for names or how much did they charge you while

7 you were at Zone Chefs?

8 A. I don't know the numbers back then.

9 Roughly, it's not really that expensive. Maybe

10 for 25,000 names it could be anywhere from 12:14PM

11 \$1,500 or something like that to \$2,000, and if

12 we did more volume, we got lower breaks, lower

13 pricing.

14 Q. So there's an agreement in place

15 whereby if you buy so many names, you pay so 12:14PM

16 much money; is that right?

17 A. Pretty much, yes.

18 And then we would go to data shows.

19 Data shows is also something that, you know, you

20 find new connections. Data shows, people 12:14PM

21 providing data for different industries.

22 Q. Okay. Does Epsilon, again, while you

23 were at Zone Chefs, did Epsilon send an invoice

24 to you that you'd pay?

25 A. Of course. They still do to this 12:14PM

Page 59

1 \* ROUGH - CONFIDENTIAL - ATTORNEYS' EYES ONLY \*

2 millions and millions of names?

3 A. We did. We used to mail 400,000 a

4 month. A small percentage of that will become

5 clients of course. 12:13PM

6 Q. When you -- any idea where Epsilon

7 gets these names from?

8 A. I have no idea, but it's --

9 Q. Really? I mean --

10 A. I don't know how they do their 12:13PM

11 business, but I know they -- it's a data

12 company.

13 Q. Right.

14 A. Like any data company. I don't know

15 how they get their names, but I know that it 12:13PM

16 definitely fits the demographic because when the

17 clients do call up, they can afford the product.

18 It's an expensive product. We want

19 to make sure that we're not getting a lot of

20 tire kickers wasting our salespeople's time, so 12:13PM

21 as long as they're calling up and they can

22 afford the product and they're interested, then

23 they're giving us the right list.

24 Q. Did you use Epsilon at Zone Chefs?

25 A. I did. 12:13PM

Page 61

1 \* ROUGH - CONFIDENTIAL - ATTORNEYS' EYES ONLY \*

2 day. We still use Epsilon, they still send us

3 invoices.

4 Q. Do you have a written agreement?

5 A. A written agreement that we purchase 12:15PM

6 their data? I guess they would give us an

7 invoice and we would pay that invoice.

8 Q. I'm just curious if there's some, you

9 know, some agreement that you have with them or

10 it's just you order what you order and they send 12:15PM

11 you an invoice.

12 A. It's public information. You know,

13 it's data. It's just names and phone numbers

14 and addresses, and these are people that are the

15 right people, you know, because we don't want to 12:15PM

16 waste the mailer. Mailers are expensive, so the

17 last thing you want to do is mail to the wrong

18 demo, you're not going to get the clients. So

19 they would provide the right list for us and

20 that's always been one of my go-to if not the 12:15PM

21 go-to company for me. They provide quality.

22 Q. So when you buy these names, they're

23 not customers yet, right?

24 A. No, people.

25 Q. So do you call them leads? 12:15PM



## Rough Transcript

Page 62	Page 63
<p>1 * ROUGH - CONFIDENTIAL - ATTORNEYS' EYES ONLY *</p> <p>2 A. Data. They're just data.</p> <p>3 Q. What are leads then?</p> <p>4 A. A lead I guess would be considered</p> <p>5 somebody who called us, somebody -- if they're 12:16PM</p> <p>6 not a client, to me a lead and data is all the</p> <p>7 same thing.</p> <p>8 Q. So if I were to say when you buy</p> <p>9 these names they're leads, that would be okay?</p> <p>10 A. I guess you can name it whatever you 12:16PM</p> <p>11 want to name it.</p> <p>12 Q. But you just said that they're the</p> <p>13 same to you and I'm just --</p> <p>14 A. We buy data from them.</p> <p>15 Q. Okay.</p> <p>16 A. We buy data. Some people do call it</p> <p>17 leads. You know, the shows that we go to</p> <p>18 Leadcom, it's data, you know? So people have</p> <p>19 different names for it.</p> <p>20 Q. Did Zone Chefs keep a database of its 12:16PM</p> <p>21 customers?</p> <p>22 A. I'm sure we did.</p> <p>23 Q. And in that database, would you have</p> <p>24 information about your customers such as what</p> <p>25 they like, what they don't like, things like 12:16PM</p>	<p>1 * ROUGH - CONFIDENTIAL - ATTORNEYS' EYES ONLY *</p> <p>2 that?</p> <p>3 A. Yes.</p> <p>4 Q. Would it be fair to say that over</p> <p>5 time with a customer, you would develop a 12:17PM</p> <p>6 increasingly detailed profile of what they like</p> <p>7 and don't like?</p> <p>8 A. Over time, usually at the initial</p> <p>9 sale.</p> <p>10 Q. If I sign up for your product -- 12:17PM</p> <p>11 A. Yes.</p> <p>12 Q. -- and I order what I order --</p> <p>13 A. Right. You would tell us at that</p> <p>14 point what you like or --</p> <p>15 MR. KEYHANI: Objection to form. 12:17PM</p> <p>16 Are you talking about the current</p> <p>17 company or previous company or both</p> <p>18 companies? What time period?</p> <p>19 MR. O'BRIEN: Today.</p> <p>20 MR. KEYHANI: With Lean Chefs? 12:17PM</p> <p>21 MR. O'BRIEN: Yes.</p> <p>22 BY MR. O'BRIEN:</p> <p>23 Q. I call you up today, I'll tell you</p> <p>24 what I want to order.</p> <p>25 A. Yes. 12:17PM</p>
Page 64	Page 65
<p>1 * ROUGH - CONFIDENTIAL - ATTORNEYS' EYES ONLY *</p> <p>2 Q. I'll make an order.</p> <p>3 But over time would you come to learn</p> <p>4 things that I like more than others?</p> <p>5 A. For the most part, the client would 12:17PM</p> <p>6 let us know that at the initial sale. They</p> <p>7 would tell us their likes and their dislikes,</p> <p>8 and then that's how we would design the program</p> <p>9 for them.</p> <p>10 Q. Does your menu ever change? 12:18PM</p> <p>11 A. Does our menu change? We have a set</p> <p>12 menu and then we add to it.</p> <p>13 Q. So does your menu change over time?</p> <p>14 A. It changes -- the original menu stays</p> <p>15 pretty much the same. We just add more weeks. 12:18PM</p> <p>16 Q. Okay. You add other dishes.</p> <p>17 A. Yes. More variety.</p> <p>18 Q. And over time as you add more dishes,</p> <p>19 would you try and come to learn which of them I</p> <p>20 like and which of them I don't like? 12:18PM</p> <p>21 A. Your restrictions are probably your</p> <p>22 restrictions for the most part. Maybe if you</p> <p>23 don't like one of those dishes, you will let us</p> <p>24 know, but for the most part if a person doesn't</p> <p>25 like an I don't eat seafood or fish, if the new 12:18PM</p>	<p>1 * ROUGH - CONFIDENTIAL - ATTORNEYS' EYES ONLY *</p> <p>2 weeks come up and it's fish and shellfish in</p> <p>3 there, then it's going to stay the same</p> <p>4 restrictions. It's not going to change because</p> <p>5 there's new dishes. If I don't eat tuna and cod 12:18PM</p> <p>6 comes up, I don't like cod either because I just</p> <p>7 don't eat fish in general, so it would just</p> <p>8 carry over.</p> <p>9 Q. How detailed is the -- was the</p> <p>10 questionnaire that Zone Chefs would give to the 12:19PM</p> <p>11 customer at the outset?</p> <p>12 A. Basic questions. Every company does</p> <p>13 the same thing. Every company pretty much asks</p> <p>14 the same questions. Really it's just a basic</p> <p>15 question; name, address, phone number, all of 12:19PM</p> <p>16 that; height, weight, things like that and then</p> <p>17 different allergies or restrictions. It seems</p> <p>18 like every company does the same thing.</p> <p>19 Q. Did Zone Chefs try and periodically</p> <p>20 learn more about its customers in an effort to 12:19PM</p> <p>21 possibly sell them more product?</p> <p>22 MR. KEYHANI: Objection to form.</p> <p>23 You can answer the question if you</p> <p>24 understand.</p> <p>25 A. Not that I recall. 12:20PM</p>